

serve as Presiding Officer, unless otherwise specified by any supplemental rules.

Regional Administrator means the Administrator of any Regional Office of the Agency or any officer or employee thereof to whom his authority is duly delegated. Where the Regional Administrator has authorized the Regional Judicial Officer to act, the term *Regional Administrator* shall include the Regional Judicial Officer. In a case where the complainant is the Assistant Administrator for Enforcement or his delegate, the term *Regional Administrator* as used in these rules shall mean the Administrator.

Regional Hearing Clerk means an individual duly authorized by the Regional Administrator to serve as hearing clerk for a given region. Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of Regional Office—see appendix). In a case where the complainant is the Assistant Administrator for Enforcement or his delegate, the term *Regional Hearing Clerk* as used in these rules shall mean the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.04(b) to serve as a Regional Judicial Officer.

Respondent means any person proceeded against in the complaint.

(b) Terms defined in the Act and not defined in these rules of practice are used consistent with the meanings given in the Act.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5323, Feb. 13, 1992]

§ 22.04 Powers and duties of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, and the Presiding Officer; disqualification.

(a) *Environmental Appeals Board.* The Administrator delegates authority under the Act to the Environmental Appeals Board to perform the functions assigned to it in these rules of practice. An appeal or motion under this part directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not pre-

clude the Environmental Appeals Board from referring any case or motion governed by this part to the Administrator when the Environmental Appeals Board, in its direction, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate the ex parte rules set forth in § 22.08.

(b) *Regional Administrator.* The Regional Administrator shall exercise all powers and duties as prescribed or delegated under the Act and these rules of practice.

(1) *Delegation to Regional Judicial Officer.* One or more Regional Judicial Officers may be designated by the Regional Administrator to perform, within the region of their designation, the functions described below. The Regional Administrator may delegate his or her authority to a Regional Judicial Officer to act in a given proceeding. This delegation will not prevent the Regional Judicial Officer from referring any motion or case to the Regional Administrator. The Regional Judicial Officer shall exercise all powers and duties prescribed or delegated under the Act or these rules of practice.

(2) *Qualifications of Regional Judicial Officer.* A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or some other Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not be employed by the Region's Enforcement Division or by the Regional Division directly associated with the type of violation at issue in the proceeding. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any hearing in which he serves as a Regional Judicial Officer or with any factually related hearing.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial

proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(d) *Disqualification; withdrawal.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may not perform functions provided for in these rules of practice regarding any matter in which they (i) have a financial interest or (ii) have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion made to the Regional Administrator request that the Regional Judicial Officer be disqualified from the proceeding. Any party may at any time by motion to the Administrator request that the Regional Administrator, a member of the Environmental Appeals Board, or the Presiding Officer be disqualified or request that the Administrator disqualify himself or herself from the pro-

ceeding. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. Assignment of a replacement for Regional Administrator or for the Regional Judicial Officer shall be made by the Administrator or the Regional Administrator, respectively. The Administrator, should he or she withdraw or disqualify himself or herself, shall assign the Regional Administrator from the Region where the case originated to replace him or her. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another region to replace the Administrator. The Regional Administrator shall assign a new Presiding Officer if the original Presiding Officer was not an Administrative Law Judge. The Chief Administrative Law Judge shall assign a new Presiding Officer from among available Administrative Law Judges if the original Presiding Officer was an Administrative Law Judge.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992; 57 FR 60129, Dec. 18, 1992]

§ 22.05 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.*

(1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of